

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE V.RAMKUMAR**

**FRIDAY, THE 14TH SEPTEMBER 2007 / 23RD BHADRA 1929**

**Crl.Rev.Pet.No. 3310 of 2007()**  
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**CRA.246/2002 of SESSIONS COURT, THALASSERY  
CC.582/1997 of JUDL.MAGISTRATE OF FIRST CLASS COURT,  
KUTHUPARAMBA**  
.....

**REVN. PETITIONER: APPELLANTS/ACCUSED**  
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- 1. K.RAVI, S/O.KUNHIRAMAN, COOLIE,  
AGED 40 YEARS, SIVAPURAM AMSOM AND DESOM,  
PO SIVAPURAM, THALASSERRY TALUK.**
- 2. BABU @ CHERIYAKADAVAN BAHULEYAN,  
S/O.ACHUTHAN, COOLIE, AGED 31 YEARS,  
DO. DO.**
- 3. PUSHPANATHAN,  
S/O.ACHUTHAN, COOLIE, AGED 35 YEARS,  
DO. DO.**
- 4. CHANDRAN,  
S/O.KUNHIRAMAN, COOLIE, AGED 35 YEARS,  
DO. DO.**

**BY ADV. SRI.S.RAJEEV**

**RESPONDENTS: RESPONDENT/STATE**  
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**STATE OF KERALA,  
REP.BY PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, ERNAKULAM  
(CRIME NO.23/1997 OF MALOOR POLICE STATION).**

**BY PUBLIC PROSECUTOR SRI.K.S.SIVAKUMAR**

**THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION  
ON 14/09/2007, THE COURT ON THE SAME DAY PASSED THE  
FOLLOWING:**

**V. RAMKUMAR, J.**

.....  
**Crl. R.P. No. 3310 OF 2007**  
.....

**Dated this the 14<sup>th</sup> day of September, 2007**

**O R D E R**

The revision petitioners, who are accused Nos.1 to 4 in C.C.No.582/1997 on the file of JFCM, Koothuparamba, challenge the conviction entered and the sentence passed against them by the courts below concurrently for offences punishable under sections 447 and 427 read with section 34 IPC.

2. The case of the prosecution can be summarised as follows:-

On 9.4.1997 at about 1.00 a.m. the accused persons out of their previous enmity towards PW2, the defacto complainant, committed criminal trespass by entering into the paramba of PW2 in Sivapuram amsom and committed mischief by destroying 121 plantains causing a loss of Rs.20,000/-.

3. On the side of the prosecution PWs 1 to 7 were examined and Exts.P1 to P3 were marked. PW2 is the defacto complainant. PW5, who is a worker of PW2, is the occurrence witness.

4. After the close of the prosecution evidence, the

accused were questioned under section 313(1)(b) Cr.P.C. with regard to the incriminating circumstances appearing against them in the evidence for the prosecution. They denied those circumstances and maintained their innocence. They did not adduce any defence evidence on being called upon to do so.

5. The learned Magistrate after trial, as per judgment dated 4.6.02 found the revision petitioners guilty of the offences and sentenced them to simple imprisonment for one month and to pay a fine of Rs.500/- and on default to pay the fine, to suffer simple imprisonment for 15 days under section 447 IPC and to simple imprisonment for six months and to pay a fine of Rs.2,000/- and on default to pay the fine, to suffer simple imprisonment for three months under section 427 IPC.

6. Aggrieved by the conviction entered and the sentence passed by the trial court, the revision petitioners preferred an appeal before the Sessions Court, Thalassery, as Criminal Appeal No.246/02. As per judgment dated 18.7.07, the learned Sessions Judge dismissed the appeal confirming the conviction entered and sentence passed against the revision petitioners. Hence, this revision.

7. The learned counsel appearing for the revision petitioners challenge the conviction recorded by the courts below on various grounds. The conviction has been entered after a careful evaluation of the oral and documentary evidence in the case and this court, sitting in the rarefied revisional jurisdiction, will be loathe to interfere with the said conviction which is accordingly confirmed.

8. What now remains to be considered is the question regarding the adequacy or otherwise of the sentence imposed on the revision petitioners. It is evident that there were criminal cases pending between the parties and the parties were at logger heads. In a case as the present where there are attacks and counter attacks, it may not be strictly possible to gauge the motive which impelled the parties to retaliate and proceed on a destruction spree. The present occurrence also might have occurred in that spirit. Considering the facts and circumstances of the case, I do not think that the revision petitioners deserve penal servitude by way of incarceration. I am of the view that interests of justice will be adequately met by imposing an appropriate fine on the revision petitioners and a direction to compensate the defacto complainant.

Accordingly, the sentence imposed on the revision petitioners is set aside and instead, each of them is sentenced to a fine of Rs.1,000/- (Rupees one thousand only) under section 447 IPC and on default to pay the fine, to suffer simple imprisonment for 20 days and for their conviction under section 427 IPC, each of the revision petitioners is sentenced to a fine of Rs.5,000/- (Rupees five thousand only) and on default to pay the fine, to suffer simple imprisonment for one month. The fine amount shall be deposited within 45 days from today. Out of the fine amount, a sum of Rs.20,000/- (Rupees twenty thousand only) shall be paid to PW2, the defacto complainant, for the loss incurred by him.

This revision is disposed of confirming the conviction but modifying the sentence as above.

**(V. RAMKUMAR, JUDGE)**

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